

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RLI INSURANCE COMPANY

Plaintiff

vs.

FIFTH THIRD BANCORP

Defendant

**FIFTH THIRD BANCORP, an Ohio
Corporation, and FIFTH THIRD BANK,
an Ohio Banking Corporation**

Plaintiff

vs.

**CERTAIN UNDERWRITERS AT
LLOYD'S SUBSCRIBING TO POLICY
B0509QA048710, B0509QA051310,
81906760, et al.**

Defendants

Civil Action No. **1:14cv802**

Judge: **Sandra S. Beckwith**

Magistrate: **Stephanie K. Bowman**

Civil Action No. **1:14cv869**

**NOTICE TO TAKE DEPOSITION OF
AXIS INSURANCE COMPANY
PURSUANT TO FED. R. CIV. P.
30(b)(6)**

Fifth Third Bancorp, an Ohio corporation, and Fifth Third Bank, an Ohio banking corporation ("Fifth Third"), by and through counsel, and pursuant to Fed. R. Civ. P. 30(b)(6) hereby provides notice to Axis Insurance Company ("Axis") that it intends to take the deposition of an Axis representative or representatives on the topics/areas of inquiry listed below. Under Fed. R. Civ. P. 30(b)(6), Axis shall designate one or more of its officers, directors or managing agents or other persons who consent to testify on its behalf to the following issues.

The deposition shall commence at 9:30 a.m. on November 12, 2015, and will be taken at the law offices of David P. Kamp, White, Getgey & Meyer Co., LPA, Fourth and Vine Tower, One West Fourth Street, Suite 1700, Cincinnati, Ohio, 45202, by stenography and video. You are invited to attend and participate.

TOPICS/AREAS OF INQUIRY

1. The efforts undertaken by Axis to locate documents responsive to Fifth Third's First Set of Interrogatories and First Request for Production of Documents to Axis. This shall include a person to testify as to the efforts undertaken by Axis to search for any electronically stored information (ESI), the process used to search for ESI, the custodians of any ESI for which a search was undertaken, and any keywords utilized in that search. This person shall also be prepared to testify as to the identification of individuals who contributed to each of Axis' interrogatory responses and the substance of their contribution to those responses.

2. The date of the initiation of any litigation hold implemented by Axis in response to any of the issues raised in Fifth Third's First Amended Complaint. This person should be prepared to testify as to the efforts undertaken by Axis in instituting a litigation hold.

3. Except for those allegations admitted by Axis, a person to testify as to the material facts upon which Axis relies at page 2 of its Answer to deny paragraph 1 of Plaintiff's First Amended Complaint.

4. Except for those allegations admitted by Axis, a person to testify as to the material facts upon which Axis relies at page 2 of its Answer to deny paragraph 4 of Plaintiff's First Amended Complaint.

5. The material facts upon which Axis relies at page 4 of its Answer to deny paragraph 14 of Plaintiff's First Amended Complaint.

6. The material facts upon which Axis relies at page 5 of its Answer to deny paragraph 22(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of Plaintiff's First Amended Complaint.

7. The material facts upon which Axis relies at page 5 of its Answer to deny paragraph 23(a), (b), (c), (d) and (e) of Plaintiff's First Amended Complaint.

8. Except for those allegations admitted by Axis, a person to testify as to the material facts upon which Axis relies at page 6 of its Answer to deny paragraph 25 of Plaintiff's First Amended Complaint.

9. Except for those allegations admitted by Axis, a person to testify as to the material facts upon which Axis relies at page 6 of its Answer to deny paragraph 26 of Plaintiff's First Amended Complaint.

10. The material facts upon which Axis relies at page 6 of its Answer to deny paragraph 27 of Plaintiff's First Amended Complaint.

11. The material facts upon which Axis relies at page 6 of its Answer to deny paragraph 28 of Plaintiff's First Amended Complaint.

12. Except for those allegations admitted by Axis, a person to testify as to the material facts upon which Axis relies at page 6 of its Answer to deny paragraph 29 of Plaintiff's First Amended Complaint.

13. The material facts upon which Axis relies at page 7 of its Answer to deny paragraph 31 of Plaintiff's First Amended Complaint.

14. The material facts upon which Axis relies at page 7 of its Answer to deny paragraph 32 of Plaintiff's First Amended Complaint.

15. The material facts upon which Axis relies at page 7 of its Answer to deny paragraph 34 of Plaintiff's First Amended Complaint.

16. The material facts upon which Axis relies at page 7 of its Answer to deny paragraph 35 of Plaintiff's First Amended Complaint.

17. The material facts upon which Axis relies at page 7 of its Answer to deny paragraph 36 of Plaintiff's First Amended Complaint.

18. The material facts upon which Axis relies at page 8 of its Answer to deny paragraph 37 of Plaintiff's First Amended Complaint.

19. The material facts upon which Axis relies to assert in its First Affirmative Defense at page 8 of its Answer that "Plaintiffs have failed to state a claim for coverage within Insuring Agreement (A)(1) of the Primary Bond."

20. The material facts upon which Axis relies to assert in its Third Affirmative Defense at page 9 of its Answer that "Plaintiffs have failed to state a claim for coverage within Insuring Agreement (G)(1) of the Primary Bond."

21. The material facts upon which Axis relies to assert in its Fourth Affirmative Defense at page 10 of its Answer that "Plaintiffs have failed to state a claim for coverage within Insuring Agreement (G)(1) of the Primary Bond because they never sought or obtained Defendants' prior approval to retain independent outside accountants or other non-legal experts."

22. The material facts upon which Axis relies to assert in its Fifth Affirmative Defense at page 10 of its Answer that Plaintiffs have failed to state a cause of action against Axis because Fifth Third failed to meet or satisfy all of the conditions precedent under Section 12 of the Conditions and Limitations section of the Primary Bond.

23. The material facts upon which Axis relies to assert in its Sixth Affirmative Defense at page 10 of its Answer that Plaintiffs failed to state a claim upon which relief may be granted because they have failed to meet or satisfy all of the conditions precedent to obtain coverage under Section 3 of the Conditions and Limitations section of the Primary Bond.

24. The material facts upon which Axis relies to assert in its Seventh Affirmative Defense at page 11 of its Answer that Plaintiffs have failed to state a claim upon which relief may be granted because they failed to meet or satisfy all of the conditions precedent under Section 5 of the Conditions and Limitations section of the Primary Bond.

25. The material facts upon which Axis relies to assert in its Eighth Affirmative Defense at page 12 of its Answer that Plaintiffs have failed to state a claim upon which relief may be granted because they failed to meet or satisfy all of the conditions precedent under paragraph F of the General Agreement section of the Primary Bond.

26. The material facts upon which Axis relies to assert in its Twelfth Affirmative Defense at page 13 of its Answer that Plaintiffs have failed to state a claim upon which relief may be granted because they have failed to meet or satisfy all of the conditions precedent to obtain coverage under Section 11 of the Conditions and Limitations section of the Primary Bond.

27. The material facts upon which Axis relies to assert in its Thirteenth Affirmative Defense at page 13 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(e) of the Conditions and Limitations section of the Primary Bond.

28. The material facts upon which Axis relies to assert in its Fourteenth Affirmative Defense at page 14 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(h) of the Conditions and Limitations section of the Primary Bond.

29. The material facts upon which Axis relies to assert in its Fifteenth Affirmative Defense at page 14 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(u) of the Conditions and Limitations section of the Primary Bond.

30. The material facts upon which Axis relies to assert in its Sixteenth Affirmative Defense at page 14 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(v) of the Conditions and Limitations section of the Primary Bond.

31. The material facts upon which Axis relies to assert in its Seventeenth Affirmative Defense at page 14 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(t) of the Conditions and Limitations section of the Primary Bond.

32. The material facts upon which Axis relies to assert in its Eighteenth Affirmative Defense at page 15 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(s) of the Conditions and Limitations section of the Primary Bond.

33. The material facts upon which Axis relies to assert in its Nineteenth Affirmative Defense at page 15 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(a) of the Conditions and Limitations section of the Primary Bond.

34. The material facts upon which Axis relies to assert in its Twentieth Affirmative Defense at page 15 of its Answer that Plaintiffs' claim is excluded, in whole or part, by Section 2(p) of the Conditions and Limitations section of the Primary Bond.

35. The material facts upon which Axis relies to assert in its Twenty-Fifth Affirmative Defense at page 16 of its Answer that Plaintiffs' claim is barred, in whole or part, by the doctrines of waiver and estoppel.

36. The material facts upon which Axis relies to assert in its Twenty-Sixth Affirmative Defense at page 16 of its Answer that Plaintiffs' claim is barred, in whole or part, by the doctrine of laches.

37. The material facts upon which Axis relies to assert in its Twenty-Seventh Affirmative Defense at page 16 of its Answer that "Plaintiffs are not entitled to the relief requested, in whole or in part, by the terms, exclusions, conditions and limitations contained in the Fifth Third Bancorp Bonds."

38. The material facts upon which Axis relies to assert in its Twenty-Eighth Affirmative Defense at page 16 of its Answer that "Plaintiffs claims are barred, in whole or in part, by their failure to mitigate their alleged damages."

39. The material facts upon which Axis relies to assert in its Twenty-Ninth Affirmative Defense at page 16 of its Answer that "Plaintiffs have failed to state a claim upon which relief may be granted because Plaintiffs' alleged loss or damages were known to, or discovered by, Plaintiffs prior to the inception date of the Fifth Third Bancorp Bonds."

40. The material efforts Axis has undertaken to investigate Fifth Third's claim for payment and reimbursement under the Bond Policy issued by Axis.

41. The date Axis denied coverage to Fifth Third under the Bonds and the identification of the person or persons who made the decision on behalf of Axis to deny coverage to Fifth Third under the bonds, and the material facts upon which the denial decision was based.

42. The identification of outside counsel who advised Axis on the issue of whether or not coverage existed for the claim submitted by Fifth Third for coverage under the Bond policies for the fraud of Matthew Ross, and when and to whom that advice was provided.

43. The date Axis concluded that litigation was anticipated by Fifth Third against Axis for coverage under the Bond policies for the fraud of Matthew Ross, and the identity of the individuals who came to that conclusion and the material facts upon which Axis relied in concluding that litigation against Axis was anticipated.

44. The identification of each Axis employee or agent who was involved in the investigation and/or adjustment of Fifth Third's claims of coverage under the Bond policies for the fraud of Matthew Ross, including the date said employee or agent became involved and the nature of the activities they undertook relating to their investigation.

45. The identification of the levels of reserve that have been set aside for Fifth Third's claim of coverage under the Bond policies for the fraud of Matthew Ross, and the material facts upon which Axis relied in establishing the reserves and/or valuation of the Fifth Third claim.

46. The identification, location and custodian of any claims materials or files regarding Fifth Third's claim of coverage under the Bond policies for the fraud of Matthew Ross.

47. The identification, location and custodian of any documents, correspondence or written analysis undertaken by Axis as identified in response to Plaintiffs' interrogatory no. 23 in which it claims it reviewed and analyzed Fifth Third Bancorp's Proof of Loss.

48. The identification, location and custodian of any documents, correspondence or written analysis undertaken by Axis as identified in response to Plaintiffs' interrogatory no. 23 in which it claims it reviewed and analyzed millions of pages of documents produced by Plaintiffs in support of a claim under Fifth Third Bancorp's Bonds.

49. The identification, location and custodian of any documents, correspondence or written analysis undertaken by Axis as identified in response to Plaintiffs' interrogatory no. 23 in which it claims it reviewed and analyzed pleadings, motions, decisions and orders, appeals and

other litigation materials from various lawsuits in support of a claim under Fifth Third Bancorp's Bonds.

50. The identification of any other claim made by an insured against Axis for payment under a Fidelity Bond similar in language to the one at issue in the present case between 2008 to 2011.

51. The identification of any policies or procedures relating to the administration or investigation of a claim brought by an insured against Axis between 2008 to 2011.

RESPECTFULLY SUBMITTED,

/S/ Mark J. Byrne

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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